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EXAMINER				
NEWTON, JARED W				
ART UNIT		PAPER NUMBER		
3693				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,986

Applicant(s)

BRAVO ET AL.

Examiner

JARED W. NEWTON

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8, 20, 32, 34, 46, 47, 49, 59, 61-63 and 65-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 20, 32, 34, 46, 47, 49, 50, 52-56, 58, 59, 61-63, 66-70 and 72-76 is/are rejected.
- 7) ☒ Claim(s) 51, 57, 65 and 71 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This final rejection is in reply to the remarks filed February 20, 2008, by which claims 1, 6, 8, 20, 51, 52, 55, 65, 66, 68, and 70 were amended, claims 5 and 60 were canceled, and claims 75 and 76 were added. Claims 1-4, 6-8, 20, 32, 34, 46-47, 49-59, 61-63, and 65-76 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 75 and 76 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In regard to claim 75, the limitation "open and does not contain any substantial restricting structures other than the at least one upstanding spool" is not supported by the disclosure as originally filed. In particular, the specification and drawings do not provide support to enable one of ordinary skill to ascertain the meaning of "open" and "does not contain any substantial restricting structures." For instance, the tray contains sidewalls, which one of ordinary skill in the art may consider a "substantial restricting structure" without support in the specification to the contrary.

For purposes of examination, the noted limitations have been interpreted consistent with the specification to recite, "open to allow passage of cables from a first side of the rack to a second side of the rack."

Claim 76 depends from claim 75, and thus is rejected under this section.

In further regard to claim 76, the limitation "wherein the tray does not have a cover covering the top of the tray" is not supported by the disclosure as originally filed. This limitation is clearly not supported because, as shown in Figure 1, the top of each tray is literally "covered" by "covers" 21.

For purposes of examination, claim 76 has been interpreted to recite, "said trays having a top and a bottom."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8, 32, 75 and 76 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,250,816 to Johnston et al. (hereafter Johnston).

In regard to claim 1, Johnston discloses a cable management system for routing cables thereon, said system including a rack (see FIG. 1) having a front side and a rear side and said rack comprising: a frame "R;" and a frame mountable pass-through tray 10 disposed on said frame, said tray having a base and sidewalls 23,24 (see FIG. 5)

defining a front-to-back channel in a center of the tray for routing said cables between the front and rear sides of said rack (see FIG. 1), said pass through tray including at least one upstanding spool 72 (see FIG. 10) disposed substantially at the center of the tray via mounting track 75, a width of the front-to-back channel being substantially constant along a length of the channel (see FIG. 5) and being large enough to receive cables.

In further regard to claim 1, Johnston discloses said tray including a rear channel defined by openings 27 and 28, wherein the rear faces the viewer as shown in Figures 2 and 3, and said rear channel adjacent to said front-to-back channel and containing a trough along which clips 74 are disposed generally planar with and connected to said base, and a rear wall 16 on an opposite side of said trough as said base, said rear channel extending substantially perpendicular to the front-to-back channel (see FIG. 2).

In regard to claim 2, Johnston further discloses at least one mounting portion "B" extending substantially perpendicularly from each of the sidewalls for permitting said tray to be mounted to said frame (see FIG. 1).

In regard to claim 3, Johnston further discloses said mounting portion including a mounting flange extending from each of said sidewalls of said front-to-back channel and a secondary mounting flange opposing the mounting flange and facing the sidewall (see FIG. 9).

In regard to claim 4, Johnston further discloses each of said side walls including a bend radius control portion 34B,35B (see FIG. 5; see also col. 4, lines 28-31).

In regard to claim 6, Johnston further discloses said rear channel including a waterfall.

In regard to claim 8, Johnston further discloses said tray including a rear channel defined by openings 30 and 32 (see FIG. 4), wherein the rear faces the viewer in Figure 4, said channel extending substantially perpendicular to the front-to-back channel, and a secondary mounting flange extending from a sidewall 24 defining the opening of said rear channel (see FIG. 5).

In regard to claim 32, said spool is freestanding such that it is isolated from all walls of said tray (see FIG. 5).

In regard to claim 75, Johnston further discloses said trays as open to allow passage of cables from a first side of the rack to a second side of the rack (see FIG. 4).

In regard to claim 76, Johnston further discloses said trays as having a top and a bottom (see FIG. 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 34, 46, 66-68, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied to claims 1 and 46 above, and further in view of US Patent No. 7,083,051 to Smith et al. (hereafter Smith).

In regard to claim 20, Johnston discloses the rack according to the limitations of claim 20 as set forth above. Johnston does not disclose a slack manager having a plurality of spools at different elevations, wherein the slack manager of a first of the adjacent racks is connected to a second of the adjacent racks such that the slack manager of the first of the racks is disposed between adjacent racks. Smith discloses a cable management assembly having adjacent racks having vertical columns 104, 108, and a vertical spool arrangement 10 disposed therebetween, having a plurality of vertically aligned spools 50 (see FIG. 1).

In regard to claims 66-68, Smith further discloses said spools being vertically and horizontally adjustable along said arrangement 10, suggesting multiple possibilities for said arrangement, including an arrangement where at least one of the spools is out of alignment with the set of spools such that a distance between the at least one of the spools and the vertical side rail of the rack is different than a distance between the set of spools and the vertical side rail of the rack, and wherein the at least one of the spools is more proximate to the vertical side rail than the set of spools, and the at least one of the spools comprises the spool adjacent to a lowermost spool of the plurality of spools.

The Johnston and Smith references are analogous art because they are from the same field of endeavor—cable management racks. It would have been obvious to one of ordinary skill in the art at the time of the invention to dispose the spool arrangement disclosed by Smith between two of the racks disclosed Johnston. The motivation would have been to provide an adjustable means for supporting and routing excess cable extending from the tray disclosed by Johnston.

In regard to claims 20, 34, 46 and 74, the examiner takes official notice that the limitation of a plurality of racks does not carry patentable weight over the rack as set forth by Johnston. Johnston discloses a cable management rack having a pass-through tray according to the rejections of claims 1-6, 8, and 32 under 35 U.S.C § 102 set forth above. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide more than one of the racks as set forth by Johnston, and to route cables between said racks, as is well known in the art. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (holding that mere duplication of parts has no patentable significance unless a new and unexpected result is produced). Furthermore, It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the racks in series as disclosed by Smith, in order to accommodate more equipment.

Claims 7 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston and Johnston in view of Smith as applied to claims 1 and 46 above, and further in view of US Patent No. 6,365,834 to Larsen et al. (hereafter Larsen).

In regard to claims 7 and 63, Johnston discloses the rack as set forth above but does not disclose rear elevator portions.

Larsen discloses a cable management rack comprising waterfall portions and a rear vertical elevator, wherein said waterfalls extend laterally in a direction perpendicular to the direction taken from the front of the rack to the rear of the rack (see FIG. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the rear waterfall portions of the rack as set forth by Johnston with

the elevator portions as set forth by Larsen. The use of said rear elevators are well known in the art, and would be an obvious improvement to the rack as set forth by Johnston, by providing cable guidance and retention down the vertical side of the rack—a motivation set forth by Larsen.

Claims 50 and 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied to claim 1 above, and further in view of US Patent No. 6,256,444 to Bechamps et al. (hereafter Bechamps).

Johnston discloses the system for routing cable as set forth above, but does not disclose a slack manager.

In regard to claim 50, Bechamps discloses an equipment rack having an adjustable guide for routing optical fibers, wherein said guide comprises a plurality of spools at different elevations attached to the vertical side rail of said rack (see FIG. 1).

In regard to claim 52, said plurality of spools (for instance spools B and E – see FIG. 3) are vertically aligned, and at least one of said spools (for instance spool A) is not aligned with the set of spools.

In regard to claim 53, the at least one spool A is more proximate to the vertical side rail than the set of spools B,E (see FIG. 3).

In regard to claim 54, the at least one spool A is the lowermost spool (see FIG. 3).

In regard to claim 55, *insomuch as understood in view of the 35 U.S.C. § 112 Rejections above*, Johnston discloses the bend radius control portions as set forth above.

The Johnston and Bechamps references are analogous art because they are from the same field of endeavor—cable management racks. It would have been obvious to one of ordinary skill in the art at the time of the invention to attach the adjustable routing guide disclosed by Bechamps to the side rail of the rack disclosed by Johnston. The motivation would have been that as disclosed by Bechamps (see col. 7, lines 27-64)—to provide an adjustable means of supporting excess cable that passes through the openings of the tray disclosed by Johnston (i.e. cables “C” in Figure 1).

Claims 47, 49, 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston and Johnston in view of Smith as applied to claims 1 and 20 above, and further in view of US Patent Application Publication No. 2002/0170726 to Mendoza (hereafter Mendoza).

Johnston discloses the system for routing cable as set forth above, but does not disclose said mounting flanges mounting the tray to the frame at both the front and rear sides of the rack.

In regard to claims 47, 49, 61 and 62, Mendoza discloses a cable management system, wherein said system comprises pass-through mounts 10 (see FIG. 24) attached to vertical frame members 22 via mounting plates comprising front and rear mounting

flanges having respective mounting holes 210 and 216 that attach respectively to the front and rear of said vertical frame members (see id).

The Johnston and Mendoza references are analogous art because they are from the same field of endeavor—cable management racks. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the front and rear mounting flanges disclosed by Mendoza to the tray disclosed by Johnston. Both references teach a means for attaching a tray or other component to a rack having vertical side rails. It would have been obvious to one skilled in the art to substitute one means for the other to achieve the predictable result of mounting the tray/component.

Claims 56, 58, 59, 69, 70, 72, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston and Johnston in view of Smith as applied to claims 1 and 20 above, and further in view of US Patent Application publication No. 2002/0176681 to Puetz et al. (hereafter Puetz).

In regard to claims 56 and 69, Johnston and Johnston in view of Smith disclose the limitations of claims 1 and 20 above, but do not explicitly disclose fans. Puetz discloses a rack for routing equipment cables, said rack including trays 325, wherein said rack comprises a plurality of outwardly and downwardly extending fans disposed between adjacent trays 329 (see FIG. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the fans disclosed by Puetz on the rack disclosed by Johnston. The motivation would have been that as disclosed by Puetz -- to limit the bend radius of the stored cables (see [0028]).

In regard to claims 58 and 70, the fans disclosed by Puetz include finger holes (see FIG. 2).

In regard to claims 59 and 72, Johnston discloses enclosures between adjacent trays.

In regard to claim 73, said enclosures overlap the majority of the front to back channels.

Allowable Subject Matter

Claims 51, 57, 65, and 71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

In view of the Amendments filed February 20, 2008, the Claim Rejections under 35 U.S.C. 112 set forth in the Office Action mailed August 20, 2007 are hereby withdrawn.

Applicant's arguments with respect to the Johnston reference have been fully considered but they are not persuasive.

In particular, Applicant contends that "The specification of Johnston does not mention a 'front-to-back channel' or any 'pass through' function for its cabinet." (Remarks, page 11). This contention relies on an intended use of the instant invention to overcome the prior art. A recitation of the intended use of the claimed invention must

result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Johnston meets the limitation of a "pass-through tray" because it is capable of storing cables in such a way. The fact that Johnston does not explicitly mention this function is not dispositive -- Johnston anticipates the limitation because there is no structural difference between the structure the limitation describes and the rack of Johnston.

With respect to the width of the channel disclosed by Johnston, the Examiner maintains that it is "substantially constant" as that term would be understood by one of ordinary skill in the art when given its broadest reasonable interpretation in view of the supporting specification. As set forth in the rejections above, the channel disclosed by Johnston is defined by sidewalls 23 and 24. These sidewalls are parallel and of the same length. Accordingly, the width of a channel disposed between them is "substantially constant."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JARED W. NEWTON whose telephone number is (571)272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

JWN
June 29, 2008

